

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA** \* **NO. 2002-KA-1417**  
**VERSUS** \* **COURT OF APPEAL**  
**JOSHUA R. LAFRANCE** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
25TH JDC, PARISH OF PLAQUEMINES  
NO. 00-2330, DIVISION "A"  
Honorable Anthony D. Ragusa, Judge  
\* \* \* \* \*  
**Judge Terri F. Love**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes III, Judge Terri F. Love,  
Judge Max N. Tobias, Jr.)

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## **REVERSED AND REMANDED**

This Court granted Joshua LaFrance's appeal of his convictions and sentences for distribution of cocaine, and he now moves to have them set aside because the trial transcript was lost and not available for review. For the following reasons, we set aside the verdict and remand for a new trial.

## **FACTS AND PROCEDURAL HISTORY**

Joshua LaFrance was charged by bill of information on July 12, 2000, with two counts of distribution of cocaine in violation of La. R.S. 40:967(A). At his arraignment on July 17, 2000, he pleaded not guilty. However, after a two-day trial on June 5-6, 2001, a twelve-member jury found him guilty as charged on each offense. LaFrance was sentenced on November 14, 2001, to serve five years at hard labor without benefit of probation, parole, or suspension of sentence on each charge. The trial court recommended that the defendant be placed in the intensive incarceration program. The appellant's motion for an appeal was granted.

## **DISCUSSION**

In a single assignment of error, the defendant argues that the sentence must be vacated because the transcript of the trial is lost and therefore cannot be reviewed by this Court.

The failure to produce the transcript of the trial deprives a defendant of his constitutional right to an appeal. The record reflects that the court

reporter has certified that he cannot produce the trial transcript because all notes, tapes and computer disks were lost in the fire at the Plaquemines Parish Courthouse on January 12, 2002. Article 843 of the Code of Criminal Procedure requires that all trial proceedings be recorded. Furthermore, the Louisiana Constitution ensures the right of judicial review based on a complete record of the evidence:

No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law.

La. Const. Art. I, §19.

In State v. Ford, 338 So. 2d 107, 110 (La. 1976), appellate counsel was not counsel at trial and the court reporter could not provide a transcript of the testimony at trial. The Supreme Court held that “without a complete record from which a transcript for appeal may be prepared, a defendant’s right of appellate review is rendered meaningless.” When a defense attorney is unable, through no fault of his own, “to review a substantial portion of the trial record for errors...the interests of justice require that a defendant be afforded a new, fully-recorded trial.” Id. The Supreme Court has held that material omissions from the transcript of the proceedings at trial bearing on the merits of an appeal will require reversal. See State v. Robinson, 387

So.2d 1143 (La.1980).

In the case at bar, the attorney at trial is not the defendant's attorney on appeal.

### **CONCLUSION**

Accordingly, for reasons cited above, the defendant's convictions and sentences are reversed, and the case is remanded for a new trial.

**REVERSED AND REMANDED**